



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,249	06/28/2002	Kenichi Tabata	50069-110	1960

20277 7590 11/24/2006

MCDERMOTT WILL & EMERY LLP
600 13TH STREET, N.W.
WASHINGTON, DC 20005-3096

EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/030,249	Applicant(s) TABATA ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5-2-05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's response is considered to be the marked up specification filed 2-3-05, the annotated and replacement sheets of Figure 4 and the clean copy of the substitute specification filed 10-26-04, and the declaration, the claims 26-47, the remarks and the annotated and replacement Figures of 5-18-05.

2. The substitute specification filed 10-26-04 and the marked up copy of the specification filed 2-3-05 have not been entered since the marked up copy of the specification still does not show all the changes made to the original specification of 1-9-02 as amended by the 1-9-02 preliminary amendment. For example, in addition to the lack of showing the subtitles as now being underlined as noted in Applicant's 2-05 remarks, compare the paragraph bridging pages 14-16 of the 1-9-02 specification to the paragraphs 60-87 and see the marked up copy of the specification filed 2-05 which does not show the proper marking up of such original paragraph nor the addition of the new paragraphs. Therefore for the purposes of the following action the specification including the abstract as filed 1-9-02 and as amended by the preliminary amendment of 1-9-02 will be considered as the specification.

Oath/Declaration

3. The oath filed 5-18-04 of Inventor Ono has been placed in the application.

Specification

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

Drawings

5. The proposed drawing changes were received on 5-18-04 and 10-26-04. These drawing changes are not approved by the Examiner. For example, see paragraph 2 *supra*, i.e. the replacement Figures filed 5-18-04 and 10-26-04 include changes only referred to in such the unentered specification of 10-26-04 and the marked up copy of 2-3-05, i.e. such Figures are also not approved/entered.

6. The drawings are objected to because the Figures are still replete with informalities, see paragraphs 2 and 5 *supra*. Therefore, for example, a line from each numeral to the structure it denotes should be set forth, i.e. no numerals in parenthesis. Also no text in any language should be set forth, i.e. such text should be included in the written description instead. Each Figure should be separately designated, e.g. No Figs. 2. Cross-sectional lines should be designated by Roman or Arabic numerals. The descriptions of the Figures on pages 14-16 and the Figures should be consistent. In Figure 1, the numeral 3B does not denote the back tissue. Also the lines from 3 and 6 and the solid portion of 3 should be dashed to denote underlying structure. In Figure 3, where are 10A and 20A? In Figure 4, where is G? In Figures 5-11, where is 8 and E1n? In Figure 5, the lines from 7A and 7B should be dashed. Also Z should be underlined. It should be noted that these examples are merely illustrative. The Figures should be

Art Unit: 3761

carefully reviewed and revised, as necessary, to overcome all the informalities therein.

Applicants are thanked in advance for their cooperation in placing the drawings in proper form.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. The drawings are still objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. See paragraphs 2 and 5 *supra*. Therefore, the invention as claimed in claim 30 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

8. The disclosure is still objected to because of the following informalities: See paragraph 2 *supra*. Therefore, the description of 1-9-02 is replete with informalities. For example: 1) The reference to the inventors, e.g. page 1, lines 20-25 should be avoided, i.e. the text should set forth a factual description of the invention. 2) The description of the Figures and the Figures should be consistent, e.g. on page 20, lines 14-22, i.e. Figures 1-3 show a member 5 positioned like member 5C in Figure 4. Compare page 22, lines 20-21 to Figures 5-11. Compare page 24, lines 5-8 to page 25, lines 3-5. 3) In Figure 1, what is 5A? In the second figure of Figure 2, what are the phantom lines showing? 4) On page 21, line 22, "2" should be --

Art Unit: 3761

2A--. On page 23, line 13, "6" should be --8--. The specification should be carefully reviewed and revised, as necessary, to overcome the informalities therein. Applicants are thanked in advance for their cooperation in placing the description in proper form.

Appropriate correction is required.

Claim Objections

9. Claims 26-47 are objected to because of the following informalities: the claims are replete with informalities. For example: in claim 26, lines 4 and 11, "for getting in contact with" should be --adapted to contact--. On lines 7 and 15, "stands" should be --extends--. On line 7, "a" should be --the--. These remarks also apply to similar language in claims 27, 30-32, 36, 39, and 45. Additionally in claim 27, on line 8, "outwardly extends" should be --extends outwardly--. This also applies to similar language in claim 31. In claim 32, second to last line "are" should be --is--. Additionally in claim 36, the third to last line appears to missing a word or words. In claims 35 and 42, "the stretching stress"(each) should be --a stretching stress--. It should be noted that these examples are illustrative of the informalities in claims 26-47. The claims should be carefully reviewed and revised, as necessary. Applicants are thanked in advance for their cooperation in placing the claims in proper form. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9a. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 40 sets forth that there are no gathering means provided on the waist flap. However, since claim 39 requires the free portion which includes stretching members on such flap, and thereby, gathering means on the flap, it is unclear what structure at a minimum claim 40 requires, e.g. gathering means or not?

Claim Language Interpretation

10. None of the claim terminology has been specifically defined in the specification. Therefore, such terminology is given its common meaning, i.e. dictionary definition. The “means” language in claim 40 does not invoke 35 USC 112, sixth paragraph, since such does not meet the three prong test set forth in MPEP 2181, i.e. proper means plus function format is not used in combination with the term “means”. Due to the lack of clarity with regard to claim 40 the claim will be interpreted to include at least the structure of claim 39.

Claim Rejections - 35 USC § 102

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 26-29, 31 and 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al, ‘121.

See Figures, especially Figure 1, elements 84, 77, 76, 102, 62, 64 and 66, Figure 3, the number of dashed lines representing elastic members in the Figures and the number of elastic members shown in cross sections of such Figures, col. 4, lines 6-7 and 10-12, col. 9, lines 13-34, col. 10, lines 6-22, and col. 13, line 57-col. 14, line 4 and the Response to Arguments section *infra*.

Claims 26-27: The absorbent article is 20 having an absorbent structure comprising an absorbent core 44 between liquid pervious sheet 38 and liquid impervious sheet 42, a side flap laterally extending from a side edge of the core, i.e. at least a portion of liquid pervious sheet 38 and liquid impervious sheet 42 below 62 in Figure 3, at least one standing cuff, the portion of 102 between 66 and 80/84 or between 66 and 64 as shown in Figure 1, which has a free portion, between, e.g., 66 and 80/84 or 66 and 64, a base line, e.g., adjacent 80/84 or 64 (It should be noted that the base line is not required to be discrete from the side flap), a standing portion from, e.g., adjacent 80/84 or 64 and a first lower C-fold to adjacent the second upper C-fold in Figure 3, and a contacting portion from the second C-fold to the distal edge 66 and stretching members, see 77, 76 and locations of such in Figure 1 and compare such locations with like locations in Figure 3 which shows an alternative folding pattern for the article of Figure 1. With regard to the deformation of the side flap, i.e. see last two lines of claims 26-27, the diaper, i.e. the side flap, is at least longitudinally curved or deformed during use due to the contraction of the elastic members and the ends of the cuffs being attached to the remainder of the diaper.

Claim 27: See discussion of claim 26. Additionally see the standing portion discussed *supra* with regard to the surface of the article including sheet 38.

Claim 28: See, e.g., col. 13, line 57-col. 14, line 4 and Figures 1 and 3. It is noted that claim 28 does not require direct fixation.

Claim 29: See, e.g., the portions of '121 cited supra with regard to claim 26, i.e. the double dashed lines 76 adjacent edge 66 and the double dashed lines 77 and the location of the latter with regard cuff 102 and similar locations of 102 in Figure 3 which show an alternative folding pattern for the article of Figure 1. Also, note col. 9, lines 21-22 and col. 10, lines 12-13 as well as comparable double dashed lines in other Figures and the number of members designated by such, i.e. each dashed line represents an elastic member, or, in other words 76 and 77 in Figure 1 each represent two elastic members.

Claim 31: See discussion of claims 26-27 and Figures, e.g. if the embodiment of Figure 1, were double folded such as described in Figure 3, at least the middle portion of the second fold, i.e. the folding portion, extends outward of the side edge of the absorbent core in the crotch region thereof.

Claims 37-38: See discussion of claim 26, i.e. attention is invited to, e.g., col. 10, lines 15-17 and elements 80/84 in Figure 1, i.e. a gasketing, i.e. plane gathering, cuff may, i.e. also infers "may not", be provided outboard of the standing cuff.

13. Claim 30 is rejected under 35 U.S.C. 102(b) as being anticipated by Bruemmer et al '606.

See Figures, especially 10-11, and 12-13, col. 9, lines 12-39, especially lines 12-14, i.e. the absorbent article is 10 having an absorbent structure 16, at least one standing cuff 34 which has a free portion, i.e. between the adhered portion of 36 and 38, a base line, e.g. the adhered portion of 36, a standing portion, i.e. from adjacent the adhered portion of 36 to adjacent fold 48,

Art Unit: 3761

and a contacting portion, i.e. 48 and from the fold 48 to the distal edge 38, and stretching members, 52 and 40 (Note 52, 48 and 40 in Figure 12). The members 40 are smaller in diameter than the members 52, see col. 9, lines 37-39, and the contractility, i.e. the constrictive force, of the members 40 are different than the members 52, i.e. "different" encompasses both larger and smaller, i.e. just not the same. Note also the Response to Arguments section *infra*.

14. Claims 32-34, 36, 39-41 and 43-47 are rejected under 35 U.S.C. 102(e) as being anticipated by St. Louis et al '433.

See Figures, especially Figure 6, and, e.g., col. 4, line 60-col. 5, line 18, col. 10, lines 11-63, col. 13, lines 7-20, col. 20, lines 53-56

Claim 32: The absorbent structure is at least 46 or 48, the side flap is 20, the standing cuff is at least 144, see, e.g., Figure 6, the base line is adjacent 172, the two-layer sheet is 176, and the water proof sheet is 174, the stretching members are 68, 68a, see col. 22, lines 7- 46, especially 10-14 and 28-31. In regard to the effective stretching length, see col. 10, lines 26-53, especially lines 38-39, i.e. the stretching length is an "other size" of the individual strand, and line 40, i.e. to provide a "gradient" ("gradient as defined by the dictionary is "a rate of inclination, slope, an ascending or descending part, incline), i.e. the individual strands may have an ascending or descending gradient of other size, i.e. the effective stretching length of the stretching member between the base line and longitudinal centerline can be shorter than that along the distal edge.

Claim 33: See col. 22, lines 44-46 and 58 in Figure 6 and compare to L and Z of the instant application.

Claim 34: See col. 10, lines 26-50. It is the Examiner's first position that the '433 reference therefore explicitly teaches the stretching stress of distal strand being different, i.e. larger or smaller than, the other strand. In any case, i.e. the Examiner's second position, at the very least '433 teaches all of the other the claimed structure and that the distal strand can have an elastic force or tension which is different, i.e. larger or smaller than that of the other strand due to a difference in any size/dimension or amount of elongation. Therefore there is sufficient factual evidence for one to conclude that the distal strand would also inherently have a stretching stress which is larger than the stretching stress of the other strand.

Claim 36: See discussion of claim 32 supra. Additionally, as seen in Figure 1, the base line, i.e. adjacent 172, extends along a longitudinal end of the absorbent structure, e.g. 48, see col. 22, lines 48-51, the sentence bridging cols. 22-23, and col. 25, lines 52-54, and a second stretching member, e.g. 110 and/or 118, and col. 10, lines 7-15 and col. 12, lines 50-58, i.e. an elastic member 110 and or 118 is provided between the base line and centerline and gathers the article adjacent the longitudinal ends thereof, i.e. deforms the longitudinal end of an absorbent structure, e.g. at least some portion of 12 and/or 14. It is noted that the second member is not required to extend only between the base line and centerline nor is the specific structure of the absorbent structure which is deformed set forth.

Claim 47: See discussion of claim 32.

Claim 45: See discussion of claims 32 and 36 and note that the claim does not require the cuff be oriented along a transverse edge of the structure, i.e. the structure 142 can contact the wearer's at the waist regions 12 and 14.

Art Unit: 3761

Claim 46: See discussion of claims 32-34, especially claim 34, which also applies here to the relationship of the contraction forces of the members.

Claims 39 and 44: See discussion of claims 32-34 and 45-46. It is again noted that the claims do not require the cuff to extend along the transverse end of the absorbent core and the element 142 contacts the wearer waist in the regions 12 and 14 (It is also noted that member 80 does not have to be at each end of the article), comprises a sheet separately provided on waist margin(s)/flap(s) 22 which include sheet 28 extending beyond 46 and/or 48, has a base line, i.e. adjacent 172, on the waist flap and extends therefrom along the liquid pervious sheet.

Claim 40: See the discussion in paragraphs 9a and 10 supra and the discussion of claim 39 supra. Note again that the member 80 does not have to be present at both end margins.

Claim 41: See discussion of claim 33 and col. 9, lines 18-25, the Figures and col. 14, lines 12-14, i.e. the dimensions, e.g. length and width, of the element 144 are greater than 10 mm in the waist flap.

Claim 43: It is noted that the specific location encompassed by "predetermined location" has not been set forth. See also the discussion of claim 41 and col. 14, line 14-16, i.e. '433 teaches the fixed portion 172 of 144 can terminate at any point along the length of the article including within the margins which have a length of about 13 to 50 mm, i.e. the longitudinal distance between the location of the fixing, i.e. 172, and the end of the waist margin/flap can be 1 mm to 40 mm.

Claim Rejections - 35 USC § 102/103

15. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

16. Claims 35 and 42 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over St. Louis et al '433.

See discussion of claim 34 supra, col. 18, lines 9-28(1 N = about 150 g/f), col. 10, lines 26-50, col. 14, lines 12-16, col. 26, lines 6-12. It is the Examiner's first position that the stretching stress as claimed is taught by St. Louis et al, i.e. the structure of 144 when tested similarly to the claimed invention has the same stress. It is noted however that it is not claimed or disclosed what the size of "a portion" as claimed is, i.e. could be 15 mm by 100 mm or not. In any case the prior art teaches the general conditions claimed, i.e. stretching stress of base line side portion larger than that of the distal edge portion. It is noted that the disclosure at page 8, lines 6-11 and page 27, lines 12-18 do not disclose the criticality of the specific stretching stresses. Since the general conditions of the claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See In re Allen, 105 USPQ 233.

Response to Arguments

17. Applicant's remarks of 5-18-04, 10-04 and 2-05 with regard to matters of form have been considered but are either deemed moot in that such matter has not been repeated or is deemed not persuasive for the reasons set forth supra.

Art Unit: 3761

Applicant's 5-18-04 remarks with regard to the prior art have been considered but are either deemed moot in that such has not been repeated or not persuasive because such are narrower in scope than the claim language and/or the teachings of the prior art. For example, as set forth supra, Roe teaches the locations of the stretching members in the cuff as now claimed. For a second example, as set forth supra, the overall teachings of Bruemmer teach the locations of the stretching members in the cuff 34 as now claimed. For a third example, St Louis teaches a cuff 144 and stretching members 68 as now claimed.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the cancellation of claims 1-15 and the addition of claims 26-47 of different scope than that of claims 1-25, i.e. each of the new

Art Unit: 3761


independent claims and thereby, each of the claims dependent therefrom, omits and/or adds structure and/or function not claimed in the “corresponding” original claims 1-25. For example, claim 26 now requires a standing portion extending toward the longitudinal centerline and the remainder of the cuff folded laterally outward at a folding portion to form a contacting portion both the standing and contacting portions including at least one stretching member, the combination of which was not required by “corresponding” claim 1. For another example, claim 36 no longer requires crepe paper but requires a second stretching member. Compare to “corresponding” claim 11.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
November 15, 2006